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2012 FEB 27 PM 4:

V REISINGE

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN CARROLL DEMOCKER,

Defendant.

CAUSE NO. P1300CR201001325

STATE'S MOTION TO HAVE  
DEFENDANT'S MENTAL  
CONDITION EXAMINED

Assigned to Hon. Gary Donahoe

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned moves this court pursuant to Rule 11.2, Arizona Rules of Criminal Procedure to allow an expert for the State to examine the Defendant.

MEMORANDUM OF POINTS AND AUTHORITIES

Defendant has noticed Dr. John Walker as an expert witness. As with many of Defendant's expert witnesses, Dr. Walker has not produced a report and does not anticipate producing a report. Counsel for Defendant has indicated that Dr. Walker will testify regarding the mental condition of the Defendant and opine that due to the stress of the investigation and the conditions of his confinement, Defendant concocted the anonymous e-mail and made plans to flee. An interview of Dr. Walker is scheduled for March 9, 2012.

1 Rule 11.2 provides that "any party may request in writing . . . an examination to determine  
2 whether a defendant is competent to stand trial, or *to investigate the defendant's mental condition*  
3 *at the time of the offense.*" Ariz. R. Crim. P., (emphasis added). Under the rule, such a motion  
4 "shall state the facts upon which the mental examination is sought." *Id.*

5 *State v. Druke* and *State v. Schantz*, *infra*, define the details of this rule, and guide its  
6 application to this case.

7 *State v. Druke*, established that Rule 11.2 is not "strictly limited to situations where  
8 competency or insanity issues have been raised", but "rather speaks more broadly to permit  
9 examinations" in accord with the rule's proviso regarding "mental condition at the time of the  
10 offense." *State v. Druke*, 143 Ariz. 314, 316-317, 693 P.2d 969, 971-972 (App. 1984)<sup>1</sup>

11 *State v. Druke* also, relying on previous case law from *State v. Schantz*<sup>2</sup>, found the  
12 "general proposition that, subject to the rights conferred upon an accused by the state and federal  
13 constitutions, a defendant is not entitled to an unfair advantage in the presentation of his defense  
14 and, conversely, that the state is entitled to a fair opportunity to present its evidence and to rebut  
15 the evidence presented by the defendant." *Druke*, 143 Ariz. at 318.

16 Further, *Druke* identifies that without "the opportunity to have its own expert . . ."   
17 examine defendant, the State "would have no means to rebut the testimony of the [defendant's]  
18 expert save through cross-examination." *Id.*, at 318. Again, holding to *Schantz*, *Druke* points out  
19 that in such a case, "an inference would arise that the evidence presented by the [defendant] as to  
20 his mental condition is true because it is uncontradicted." *Id.* This would result in a situation  
21 wherein "the [S]tate is denied reciprocal rights of discovery . . ." otherwise contemplated under  
22

23 <sup>1</sup> Also, as to the basis of authority directing the application of the rule, it is "procedural in nature and a  
24 valid exercise of the supreme court's rulemaking power" and the statute, A.R.S. 13-3993, "cannot  
constitutionally be construed as modifying or superseding the criminal rules." See *Druke*, 143 Ariz. at  
317.

25 <sup>2</sup> "There is an inference arising out of the failure of the State to call expert medical witnesses in rebuttal  
26 that the defendant's evidence as to insanity is true because it is uncontradicted. We are of the view that  
where a defendant files a notice of reliance on insanity and thereafter offers expert testimony based  
upon an examination to which he submitted himself the refusal of an examination by competent  
medical experts representing the State may be shown to negative that inference." *State v. Schantz*, 98  
Ariz. 200, 213-214, 403 P.2d 521 (1965).

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1 the rules. See, Ariz. R. Crim. P., 15.1 and 15.6.

2 Druke holds that a "construction" disallowing the State to have its own expert examine the  
3 defendant, and to allow such examination to stand in rebuttal of defendant's examination, "would  
4 be totally contrary to the spirit and purpose of the rules, and would give an unfair and  
5 unwarranted advantage to the [defendant] in the presentation of his defense." *Id.*

6  
7 **RESPECTFULLY SUBMITTED** this 27 day of February, 2012.

8 **Sheila Sullivan Polk**  
9 **YAVAPAI COUNTY ATTORNEY**

10 By: Steven A. Young  
11 **Steven A. Young**  
12 Deputy County Attorney

13 **COPY** of the foregoing **emailed** this  
14 27th day of February, 2012, to:

15 Honorable Gary Donahoe  
16 Division 1  
17 Yavapai County Superior Court  
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By: R. J. Smith